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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 ALEXANDER M. AND AMY N.
8 SOUSIE,

9 Plaintiff,

10 v.

11 ALLSTATE INDEMNITY COMPANY,
12 Defendant.

CASE NO. C17-5078 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT AND FOR MORE
DEFINITE STATEMENT AND
GRANTING DEFENDANT LEAVE
TO AMEND

13 This matter comes before the Court on Plaintiffs Alexander and Amy Sousie's
14 ("Sousies") motion for partial summary judgment and for more definite statement (Dkt.
15 9). The Court has considered the pleadings filed in support of and in opposition to the
16 motion and the remainder of the file and hereby grants in part and denies in part the
17 motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On January 4, 2017, the Sousies served the Washington Insurance Commissioner
20 with a complaint against Defendant and foreign insurer Allstate Indemnity Company
21 ("Allstate"). Dkt. 1-1. The Sousies assert a cause of action for breach of their insurance
22 agreement and a violation of Washington's Insurance Fair Conduct Act. *Id.*

On February 1, 2017, Allstate removed the matter to this Court. Dkt. 1.

1 On February 17, 2017, Allstate answered the complaint and asserted the
2 affirmative defense that the Sousies' damages are not covered under the policy of
3 insurance because of misrepresentation, concealment, and lack of ownership. Dkt. 8.

4 On March 2, 2017, the Sousies moved for summary judgment and for a more
5 definite statement. Dkt. 9. On March 20, 2017, Allstate responded. Dkt. 13. On March
6 24, 2017, the Sousies replied. Dkt. 16.

7 **II. DISCUSSION**

8 **A. Summary Judgment**

9 The Sousies move for partial summary judgment on jurisdiction, venue, all
10 defenses under Federal Rule of Civil Procedure 12(b), the issuance and contents of the
11 insurance policy, facts relating to the theft of personal property, and certain other
12 affirmative defenses. Dkt. 9 at 6–10.

13 **1. Standard**

14 Summary judgment is proper only if the pleadings, the discovery and disclosure
15 materials on file, and any affidavits show that there is no genuine issue as to any material
16 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
17 The moving party is entitled to judgment as a matter of law when the nonmoving party
18 fails to make a sufficient showing on an essential element of a claim in the case on which
19 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
20 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
21 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
22 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must

1 present specific, significant probative evidence, not simply “some metaphysical doubt”).
2 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
3 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
4 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
5 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
6 626, 630 (9th Cir. 1987).

7 The determination of the existence of a material fact is often a close question. The
8 Court must consider the substantive evidentiary burden that the nonmoving party must
9 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
10 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
11 issues of controversy in favor of the nonmoving party only when the facts specifically
12 attested by that party contradict facts specifically attested by the moving party. The
13 nonmoving party may not merely state that it will discredit the moving party’s evidence
14 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
15 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
16 nonspecific statements in affidavits are not sufficient, and missing facts will not be
17 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

18 **2. Jurisdiction and Venue**

19 If the court determines at any time that it lacks subject-matter jurisdiction, the
20 court must dismiss the action. Fed. R. Civ. P. 12(h)(3). Therefore, the Court denies the
21 Sousies’ motion on this issue.
22

1 Allstate concedes personal jurisdiction and venue. Dkt. 13 at 7. Therefore, the
2 Court grants the Sousies' motion on these issues.

3 **3. Other Matters**

4 The Sousies' motion is inappropriate for all other matters at this time. Allstate has
5 properly asserted and plead the majority of its defenses. The Court agrees with Allstate
6 that a summary judgment motion is an inappropriate means to determine the authenticity
7 of the parties' contract. Forcing Allstate to agree to the facts of the theft of the Sousies'
8 property before discovery has even begun is also inappropriate. Therefore, the Court
9 denies the Sousies' motion on these issues.

10 **4. Sanctions**

11 Allstate requests that the Court award sanctions for having to respond to the
12 Sousies' inappropriate motion. Dkt. 13 at 2. "A district court may impose sanctions
13 when a motion is not well grounded in fact." *Mossman v. Roadway Exp., Inc.*, 789 F.2d
14 804, 806 (9th Cir. 1986). While portions of the motion are indeed inappropriate, the
15 Court is unable to conclude that the motion rises to the level of sanctionable conduct.
16 Therefore, the Court denies Allstate's request for sanctions.

17 **B. Motion to Dismiss**

18 The Sousies move to dismiss Allstate's defense based on misrepresentation for
19 failure to plead the defenses with particularity. Dkt. 9 at 13–17. Although neither party
20 has provided binding authority for the proposition that an affirmative defense of fraud
21 must be plead with particularity, the weight of authority suggests that such a defense
22 must comply with Federal Rule of Civil Procedure 9(b). *See, e.g.*, 5A Fed. Prac. &

1 Proc. Civ. § 1297 (3d ed. 2004) (“Inasmuch as the defense of fraud cannot be raised in an
2 answer under a general denial because Rule 8(c) requires that defense to be pleaded
3 affirmatively, the assertion of such a defense is an allegation of fraud and is subject to the
4 heightened pleading requirements of Rule 9(b).”). Therefore, the Court grants the
5 Sousies’ motion on this issue and grants Allstate leave to file an amended answer.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that the Sousies’ motion for partial summary
8 judgment and for more definite statement (Dkt. 9) is **GRANTED in part** and **DENIED**
9 **in part** as stated herein. Allstate must file an amended answer no later than May 12,
10 2017.

11 Dated this 3rd day of May, 2017.

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14 **BENJAMIN H. SETTLE**
United States District Judge